MONTANA LEGISLATIVE HISTORY

Chapter 601 1985

Bill H 529 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 11	✓ C	Hearing Date(s)	Mar 18	✓ C
	Feb 22	✓ C		Mar 22	✓ C
		C			C
		C			C
Date Out	Feb 22	✓ C		Mar 22	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 529

INTRODUCED BY [signature]

A BILL FOR AN ACT ENTITLED: "AN ACT DELINEATING AND EXPANDING THE CAUSES OF ACTION AND REMEDIES AVAILABLE TO AN INJURED EMPLOYEE OF AN UNINSURED EMPLOYER OR TO THE EMPLOYEE'S BENEFICIARIES; AMENDING SECTIONS 39-71-504, 39-71-508 THROUGH 39-71-510, AND 39-71-2905, MCA."

WHEREAS, it is the public policy of the State of Montana to ensure that every employee who is required to be covered under the state's workers' compensation laws, or his beneficiaries, receive, in the event of compensable injury or death, the monetary compensation to which they are entitled or are adjudged to be entitled under Title 39, chapter 71, part 7; and

WHEREAS, under current laws, an employee of an uninsured employer or the employee's beneficiaries are significantly impeded in the ability to recover full or partial compensation for a compensable injury or death; and

WHEREAS, this situation exists because of all of the following factors:

(1) There is a significant number of uninsured employers in Montana.

(2) The insured employers' fund is, for all practical purposes, insolvent.

(3) Existing remedies for an injured employee or his beneficiaries are inadequate, particularly when the negligence of the employer is not or cannot be proven to be the proximate cause of the injury or death.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund -- option for agreement between division and injured employee. The fund shall be funded in the following manner:

(1) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) (a) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid

LC 1170/01

INTRODUCED BILL
HB 529

from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection (2)(a) may not exceed ~~$30,000~~ $50,000.

(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or [section 6].

(3) The division may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The division may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the division from the uninsured employer pursuant to subsection (2)(a)."

Section 2. Section 39-71-508, MCA, is amended to read:

"39-71-508. ~~Election of uninsured employee to take under the fund or bring action against employer election binding~~ Coordination of remedies. An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may ~~elect to either receive~~ pursue all remedies concurrently, including but not limited to:

(1) a claim for benefits from the uninsured employers' fund; ~~or pursue~~

(2) a damage action against the employer. ~~However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action.~~ in accordance with 39-71-509;

(3) an independent action against an employer as provided in [section 6]; or

(4) any other civil remedy provided by law."

NEW SECTION. Section 3. Setoffs to claim against fund. A claim for benefits from the uninsured employer's fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

Section 4. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, 39-71-502, and 39-71-503, injured employees or an employee's

beneficiaries who ~~elect--to--receive~~ pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 5. Section 39-71-509, MCA, is amended to read:

"39-71-509. ~~Election--to--bring--action~~ Action against uninsured employer -- limitation of employer's defenses. If an injured employee or the employee's beneficiaries ~~elect to~~ bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or

appliances."

NEW SECTION. Section 6. Independent cause of action. (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In such an action, prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not so enrolled on the date of the injury or death.

(3) It is not a defense to such an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting such failure to exist.

(4) The amount of recoverable damages in such an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

(5) (a) If the uninsured employer is a corporation, the owners, officers, or directors of the corporation may be joined as defendants in the action.

(b) If it is shown by a preponderance of the evidence that an owner, officer, or director was personally negligent in failing to enroll under a compensation plan on behalf of the corporation, a judgment may be rendered against the owner, officer, or director jointly and severally for all or a portion of the final damages awarded to the claimant, in accordance with 27-1-703.

(c) It is not a defense for an owner, officer, or director that he was acting as an agent of the corporation.

(6) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to his damages.

NEW SECTION. Section 7. District court venue for independent cause of action. An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to [section 6] must bring such action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant such interim relief as it considers appropriate, including but not limited to injunctive relief, attachment, or receivership.

NEW SECTION. Section 8. Requirement to serve papers. In pursuing remedies under this part, an injured employee or his beneficiaries shall serve all pleadings and all other

litigation papers on the division and the uninsured employer, regardless of whether the division or the uninsured employer is a party to the particular action to which the papers relate.

NEW SECTION. Section 9. Setoffs. Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or [section 6] may be offset by the uninsured employer against his remaining liability under those sections.

NEW SECTION. Section 10. Settlement. The division, the uninsured employer, the injured employee or his beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under this part of any or all of the parties. Such a settlement is subject to division approval in accordance with 39-71-741.

Section 11. Section 39-71-2905, MCA, is amended to read:

"39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute. The judge, after a hearing, shall make a

determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. The workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in [section 7]. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed against an insurer for disputes arising under chapter 71."

NEW SECTION. Section 12. Extension of authority. Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 13. Codification instruction. Sections 3 and 6 through 10 are intended to be codified as an integral part of Title 39, chapter 71, part 5.

-End-

HOUSE BILL NO. 529

INTRODUCED BY ADDY

IN THE HOUSE

January 28, 1985	Introduced and referred to Committee on Judiciary.
February 23, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 25, 1985	Second reading, do pass.
February 26, 1985	Considered correctly engrossed.
February 27, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

March 5, 1985	Introduced and referred to Committee on Judiciary.
March 22, 1985	Committee recommend bill be concurred in. Report adopted.
March 23, 1985	Second reading, concurred in as amended.
March 26, 1985	Third reading, concurred in. Ayes, 50; Noes, 0.
	Returned to House with amendments.

IN THE HOUSE

[illegible] 27, 1985

[illegible] 2, 1985

Received from Senate.

Second reading, amendments concurred in.

On motion, rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in.

Sent to enrolling.

Reported correctly enrolled.

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 520	1/28/85	2/11/85 2/23/85	2/23/85			2/23/85			
HB 521	1/28/85	2/1/85	2/20/85		2/1/85				
HB 522	1/28/85	2/8/85 2/14/85	2/14/85			2/14/85			
HB 529	1/28/85	2/11/35 2/22/85	2/22/85			2/22/85			
HB 528	1/28/85	2/8/85 2/15/85	2/16/85		2/16/85				
HB 531	1/29/85	2/6/85 2/8/85	2/8/85			2/8/85			
HB 532	1/29/85	2/6/85 2/8/85	2/8/85	2/8/85					
HB 533	1/29/85	2/12/85 2/20/85	2/23/85		2/20/85	AS AMENDED			
HB 536	1/29/85	2/12/85 2/20/85	2/23/85		2/20/85	Re-referred back to Comm. 2-27			
HB 541	1/29/85	2/15/85 2/16/85	2/16/85	2/16/85					
HB 547	1/29/85	2/7/85 2/8/85	2/8/85	2/8/85					
HB 557	1/29/85	2/13/85	2/13/85			2/13/85			
HB 566	1/30/85	2/8/85 2/13/85	2/13/85	(WITHOUT RECOMMENDATION AS AMENDED)					
HB 575	1/30/85	2/8/85 2/11/85	2/11/85			2/11/85			
HB 577	1/31/85	2/15/85 2/16/85	2/16/85			2/16/85			
HB 585	1/31/85	2/15/85 2/16/85	2/16/85	2/16/85					

There being no further proponents or opponents, Rep. Nathe closed, and the floor was opened for questioning.

Rep. Hammond wanted to know if there is a cost to the sheriff's department to post these notices. Rep. Nathe assumes it comes out of the county budget.

Rep. Addy said that publication of notice of the sale has been required in the past, and it requires one a week for three weeks. You would divide that requirement for publication by 1/3. Instead of three notices, there would only be one notice. He sees the bill as having an opposite effect.

Rep. Nathe said that there seems to be all types of property that fall under the sheriff's sale provision. Mr. Nathe doesn't know if all of them are being covered by the publication of the papers.

There being no further questions, hearing closed on HB 431.

CONSIDERATION OF HOUSE BILL NO. 529: Rep. Kelly Addy, House District #94, sponsor of HB 529, testified before the committee. He said this is a bill that seeks to sure up the solvency of the uninjured employers fund under the workers' compensation statute. At present, if an employee is injured and the employer is injured, the employee is limited to remedies under workers' compensation law. On the other hand, if the employee is injured and the employer is uninsured, they have to make an election between the two remedies. One is to make a claim against the uninsured employer's fund, and if it isn't solvent a person gets a certain portion of nothing from that fund; or proceed against the employer. Quite often the employer (if it is a corporation) is undercapitalized and doesn't have any assets against which the person can proceed if he gets a judgment. The unfortunate situation as it now stand is that the employee needs to make that election at the outset.

This bill give the employer three options to proceed with. You can proceed with the three options without excluding the other two. Rep. Addy pointed out some of the changes as set forth in the bill.

Karl Englund, Montana Trial Lawyers Association, said that the notion of election is a very difficult determination to make right now. This bill will take away incentive from employers not to cover and provide an injured person three ways to try to get compensated for their injuries with the understanding that he is only going to be compensated one time.

Gary Blewett, Administrator of the Workers' Compensation Division, Department of Labor and Industry, testified in support of this bill. He said the division investigates approximately 600 to 700 employers a year for possible uninsured status. They have narrowed that down to around 230 who they were capable of finding. Out of the 230 cases, there are about three fourths of them that have accidents on the uninsured cases.

OPPONENTS:

George Wood, executive secretary of the Montana Self-Insurers Association, testified against HB 529. He said the theory of providing benefits for injured employees of uninsured employers is a good one; unfortunately, the fund has always been underfunded. He feels this bill does not correct this defect, but only further confuses it. A copy of his testimony was marked Exhibit A and attached hereto.

There being no further opponents, Rep. Addy closed. This bill seeks to place the burden for funding injuries to workmen who work for unemployed injurers on the shoulders of those who did not choose to insure their employees. It places the burden on the shoulders of the people who are responsible for the problem.

The floor was opened to questions from the committee.

In response to a question, Rep. Addy said there is a general body of law allowing the "piercing of the corporate veil" where a manifested justice would result, where the corporation has been undercapitalized, where the corporation is actually the alter-ego, or where the refusal to permit the "piercing the corporate veil" would be tantamount to condoning a fraud.

In response to a question, Mr. Wood said his suggestion for funding this fund would be 1/3 general fund, 1/3 employers and 1/3 employees since we all have an interest in the lack of income for these people following the injury. He pointed out that there are some states that fund in that manner.

There were more general questions directed towards Rep. Addy and Mr. Blewett. Hearing closed on HB 529.

CONSIDERATION OF HOUSE BILL NO. 520: Rep. Ed Grady, House District No. 47, chief sponsor for this bill, offered testimony in its support. This bill was requested by the Montana Water Development Association and the Montana Irrigators. The bill was a result of

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/11/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. 520; 529; 620 DATE February 11, 1985

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
K.M. Kelly	Helena	HB 520	
Bill Asher	Bozeman APA	HB520	
Jim Jenson	Billings / Hilm (Magistrates)	HB 620	
Todd Hidak	11th Assn. of Counties	620	
Mike Ahlen	Supreme Court	HB 620	
Margaret S Davis	League of Women Voters	X HB's	
Edward C Pratt	MT Retirement Assoc	X 529	
Larry Weinberg	MT. Univ. Syst.	No 529 position	
Greg Noot	Mt. Ass'n of Insurance Agents		529
Molly Munro -	MONTANA - Nat.	529	
Jo Brunner	M.I.F.E.	520	
Mike Micone	WETA	520	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Rep. Keyser further moved that HB 911 DO PASS AS AMENDED. The motion was seconded by Rep. Gould and carried with Reps. Miles, Mercer and Eudaily dissenting.

ACTION ON HOUSE BILL NO. 17: Rep. Hannah moved that HB 17 DO NOT PASS. The motion was seconded by Rep. Hammond. There being no discussion, the question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 529: Rep. Addy moved that HB 529 DO PASS. The motion was seconded by Rep. Hammond.

Rep. Addy moved to amend on page 6, following line 22 through page 7, line 9, strike subsection (5) in its entirety and renumber subsequent subsections. The motion was seconded by Rep. Mercer. There being no discussion, the motion carried unanimously.

Rep. Addy further moved that HB 529 DO PASS AS AMENDED. The motion was seconded by Rep. Montayne. The question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 918: Rep. Darko moved that HB 918 DO NOT PASS. The motion was seconded by Rep. Hammond and discussed.

Rep. Mercer made a substitute motion that HB 529 DO PASS. The motion was seconded by Rep. Keyser. Rep. Mercer further moved to amend the bill on page 1, line 11 by striking "an express"; on page 14, following "by" strike "a" and insert "statute or"; page 1, line 15, following "employment" strike "," and insert "or"; through "reasons" following "probation" strike ", or" through "reasons" on line 17; page 1, line 19, following "unless" strike "there is an express" insert "the termination violates a statute or"; following "employment" strike "that the termination violates"1 page 1, line 23, following "employment," strike "an" and insert "a good faith". Rep. Mercer said these amendments should take care of the problems Mr. Englund had with the bill. The motion was seconded, and it carried unanimously.

Rep. Mercer further moved that HB 918 DO PASS AS AMENDED. The motion was seconded by Rep. Gould.

Rep. Kreuger moved a substitute motion for a DO NOT PASS AS AMENDED. The motion was seconded by Rep. Brown and further discussed.

Rep. Krueger feels that this is a very critical area and further feels that the issues are not being adequately addressed. He just feels it is a bad bill.

It was Rep. Darko's opinion that the committee is not spending enough time considering this important bill. It also affects the people who are being employed.

Rep. Mercer moved to delete subsection (7) in its entirety.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 12:00 noon

Date 2/22/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/22/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara			
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 22 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 529

FIRST reading copy (WHITE)
color

WORKERS' COMP. REMEDIES WHEN EMPLOYER IS UNINSURED

Respectfully report as follows: That HOUSE Bill No. 529
as amended as follows:

1. Page 6, following line 22 through page 7, line 2.
Strike subsection (5) in its entirety.

Renumber subsequent subsection.

AND AS AMENDED,
DO PASS

REP. TOM KEATING Chairman.

STATE PUB. CO.
Helena, Mont.

CHAIRMAN--MAZUREK, JOE
SECRETARY-STALEY, CINDY
NORMAL SCHEDULE==> SITE: OLD SUPREME COURT ROOM DAYS: M-TU-W-TH-F TIME: 10:00 A.M.-12 NOON

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0520	3/05	3/25		CONCUR		3/28
GRADY, EDWARD J.			CLARIFYING PUBLIC DOES NOT HAVE RIGHT TO USE DIVERTED WATER FOR RECREATION			
HB0522	2/21	3/07		CONCUR AS AMENDED		3/7
PECK, RAY			PROVIDING NOTICE TO CLAIMANTS OF CERTAIN PROPERTY SUBJECT TO FORFEITURE			
HB0529	3/05	3/18		CONCUR		3/22
ADDY, KELLY			WORKERS' COMP. REMEDIES WHEN EMPLOYER IS UNINSURED			
HB0532	2/13				BUSINESS & LABOR	
PISTORIA, PAUL G.			LIMITATION ON PENALTIES THAT MAY BE IMPOSED BY A PRIVATE PARKING SERVICE			
HB0541	2/22	3/21		CONCUR AS AMENDED		3/23
DARKO, PAULA A.			PARTY MULTIPLYING LEGAL PROCEEDINGS LIABLE FOR INCREASED COSTS			
HB0547	2/13	3/11		CONCUR		3/11
MILES, JOAN			REVISION OF LAW ON CERTAIN SEXUAL CRIMES			
HB0566	2/21	3/12		CONCUR		3/12
THOMAS, FRED			PROHIBIT INSTALLATION AND USE OF DIAL-UP SECURITY ALARM SYSTEMS			
HB0575	2/16	3/25		ADVERSE REPORT /as amended		3/25
KADAS, MIKE			INCREASED PENALTY FOR CERTAIN UNLAWFUL RESTRAINTS OF A CHILD			
HB0579	2/16	3/12		CONCUR AS AMENDED		3/21
WINSLOW, CAL			CERTIFICATION FOR VOLUNTARY ADMISSION OF MENTAL PATIENT TO STATE HOSPITAL			
HB0585	2/22	3/20	3/20	CONCUR AS AMENDED		3/23
GOULD, R. BUDD			REVISE SENTENCE REVIEW PROCEDURE			
HB0586	2/19	3/20		CONCUR		3/20
GOULD, R. BUDD			CONFISCATE AND DISPOSE OF INMATES' CONTRABAND			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 18, 1985

The fifty-first meeting of the Senate Judiciary Committee was called to order at 10 a.m. on March 18, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 529: Representative Kelly Addy, sponsor of this bill, said that this bill deals with workers who are injured on the job while they are working for someone who does not have workers' compensation coverage. The employee only has two choices, either he has to sue the employer directly, or they have to make a claim against the uninsured employers' fund. I think the testimony today will show that there is only about $600,000 in the uninsured employers' fund, and if everyone who is injured on the job were to file a claim with that fund, they would not have an adequate sum returned to them on a prorata basis. The only other option they have is to sue the uninsured employer directly. And if they guess wrong, and the employer is a corporation and the employer has succeeded in depleting all the assets of the corporation or encumbering all the assets of the corporation so that all you can sue is a corporation that doesn't have any assets in it, you can see that the employee in that case too is left with no effective remedy. What House Bill 529 does is give the worker a multiple number of remedies available to him. They may file a claim against the uninsured employers' fund. They may sue the employer directly. They may do both of those things, so that the election that you see on page 5 in existing law is no longer the exclusive remedy. If they guess wrong, they can go back and forth between causes of action. Also, it limits the remedies that are available to the employer to those that would be available to him if he were sued on a workers' compensation claim.

PROPONENTS: Gary Blewett, Administrator of Workers' Compensation Division, supports this bill. The Department supports this bill as an important opportunity for employees to get benefits they are not otherwise able to have when they work for an uninsured employer. We have tried numerous ways to build up the uninsured employers' fund, but none of the ways have been successful. We are able to identify and find uninsured employers and collect fines from them, which is the major source of money in the uninsured employers' fund, but the number that we are able to find and the fines that they pay are not enough to pay the full amount of benefits to those claimants. We are running anywhere from $20,000 to $60,000 that we collect in fines per month. That amount has only yielded to date about $600,000 in the uninsured employers'

fund. We have claims against that for about 200 claimants right now which are far in excess of what that amount would make available. We are trying to work out some rules that we can make some proportional payments to them, but that is still not paying them what the normal Workers' Compensation Act would pay. This bill would give some additional remedies against uninsured employers and expand the opportunity to get the moneys that would be due them had they worked for an insured employer. We are just this week taking the opportunity to advertise the fact that employers are supposed to be insured under the workers' compensation act. In this way, we feel that those employees realizing that they are working for an uninsured employer will call a hotline listed in the advertisement and we can catch these uninsured employers.

Keith Olson, Executive Director, Montana Logging Association, supports this bill. The Montana Logging Association represents in excess of 500 independent logging contractors from throughout the timbered regions of Montana. We rise in support of House Bill 529 because we sincerely believe that some uninsured employers can be classified as the lowest form of life known to human man. No-one should have to check out whether or not his employer is insured when seeking employment. This creates two serious problems, if an employee is injured while working for an uninsured employer, he becomes a welfare recipient and we have to pick up the tab for that. Second, uninsured employers unfairly compete for business with insured employers who are in compliance with the law.

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: There were no questions from the Committee.

CLOSING STATEMENT: The whole idea of the bill is to place the burden for solving the problem on the shoulders of those who are creating the problem.

Hearing on HB529 was closed.

CONSIDERATION OF HB 712: Representative Ron Miller, sponsor of the bill, said the issue of this bill is, the bill will place a lien in front of financial institutions as far as lien laws go. The reason we bring this bill forward is because of the fairness aspect of it. First of all, there are liens on seeds, farm labors, crop dusters, hail insurance, etc. Fertilizer in this state is really big business. There is about $200 million dollars per year of fertilizer sold in this state. There is no operation of this size that does not allow people who are selling this type of equipment, whatever you have, not to place liens upon it. As every farmer knows, about 35% of his operating costs go for fertilizer. Representative Miller went on to tell the committee about the benefits of fertilizer. He said the banks say, "let the seller

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 03/05/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

Galt explained the problem is the one who forgets there is even a record of it. Senator Mazurek stated we made a civil penalty not criminal. Senator Shaw stated he doesn't think what has been suggested will work. Senator Mazurek stated this would give you as the landowner the ability to give a lessee notice and tell him if he doesn't take his lease off the record, you will go to the county attorney, at which time he may become criminally liable. Senator Crippen moved HB 840 be recommended BE NOT CONCURRED IN. The motion failed with Senators Brown, Galt, Pinsoneault, Shaw, and Yellowtail voting in opposition. Senator Pinsoneault moved HB 840 be recommended BE CONCURRED IN. The motion carried with Senators Blaylock, Crippen, and Mazurek voting in opposition.

ACTION ON HB 529: Senator Mazurek stated we presently have an uninsured employers fund which is insolvent. This would give employees benefits in case an employer is uninsured. It is a real problem. Senator Pinsoneault moved HB 529 be recommended BE CONCURRED IN. The motion carried with Senator Shaw voting in opposition.

TABLING OF HB 778: Senator Pinsoneault moved HB 778 be recommended BE NOT CONCURRED IN. Senator Mazurek spoke against the motion. He stated the only problem he has with the bill is you still allow a contingency fee and it comes out of the claimant's share. What they are trying to do is reasonable. In workers' compensation cases, you seldom fight over liability; you fight over what the claimant is entitled to. Part of the reason for this is attorneys' fees are paid on a net recovery basis over and above what the employee receives as benefits. What this bill says is the attorney gets his reasonable rate of compensation over and above the benefits. Senator Brown moved as a substitute motion that HB 778 be recommended BE CONCURRED IN. Senator Mazurek stated there was a concern about the language on page 2, lines 20-23. Senator Daniels reminded the committee about Judge Reardon's testimony on that matter. Senator Towe asked what the purpose of the bill was and asked what we gained from it. Senator Mazurek responded fees being charged on a compensation basis as opposed to a contingency fee. Senator Towe stated it appears the only question is whether fees should be on a contingency fee basis or on an hourly fee basis. Senator Blaylock stated if we have this, it seems that when an injured employee goes to an attorney and asks what he will get charged, the attorney will have to be honest and say he is going to charge him on an hourly basis, and he charges such and such an hour. Without this bill, the attorney won't have to do that. Senator Mazurek stated there is a fee agreement that you get 25%, 33%, or 40% of the net recovery depending on how far the case goes. Everyone uses the same fee agreement. He suggested that in workers' compensation cases, generally speaking, the only dispute is how much money the claimant will get, because there are very few defenses. What he is saying is he is not trying to deprive any attorney of a reasonable fee for services rendered. If an attorney spends 100 hours, he ought to get paid for 100

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 03228

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

STANDING COMMITTEE REPORT

March 22 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 529

third reading copy (blue color)

(Senator Mazurek)

WORKERS' COMP. REMEDIES WHEN EMPLOYER IS UNINSURED

Respectfully report as follows: That HOUSE BILL No. 529

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek Chairman.